

§ 1779.25

(7) Initial operating expenses, including interest, for a period ordinarily not exceeding one year when the applicant is unable to pay such expenses;

(8) The purchase of existing facilities when it is necessary either to improve service or prevent the loss of service; and

(9) Refinancing non-Agency debts incurred by, or on behalf of, an applicant when all of the following conditions exist:

(i) The debts being refinanced are a secondary part of the total loan unless the debt being refinanced is an Agency direct loan;

(ii) The debts were incurred for the facility or service being financed or any part thereof; and

(iii) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(10) Refinancing Agency debts.

§ 1779.25 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) Facilities which are not modest in size, design, and cost;

(b) Loan or grant finder's fees;

(c) The construction of any new combined storm and sanitary sewer facilities;

(d) Any portion of the cost of a facility which does not serve a rural area;

(e) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment;

(f) Rental for the use of equipment or machinery owned by the applicant;

(g) For other purposes not directly related to operating and maintenance of the facility being installed or improved; or

(h) The payment of a judgment which would disqualify an applicant for a loan under § 1779.20(a).

§ 1779.26 [Reserved]

§ 1779.27 Lenders.

(a) *Eligible lenders.* Eligible lenders may participate in the loan guarantee program. These lenders must be subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and

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regulates credit institutions. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders are:

(1) Any Federal or State chartered bank or savings and loan association;

(2) Any mortgage company that is a part of a bank holding company;

(3) Co-Bank, National Rural Utilities Cooperative Finance Corporation, Farm Credit Bank of the Federal Land Bank, or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this part;

(4) An insurance company regulated by a State or National insurance regulatory agency;

(5) State Bond Banks or State Bond Pools; and

(6) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development-type projects. Lenders under this category must be approved by the National Office prior to the issuance of the loan guarantee.

(b) *Conflict of interest.* When the lender's officers, stockholders, directors, or partners (including their immediate families) or the borrower, its officers, stockholders, directors, or partners (including their immediate families) own, or have management responsibilities in each other, the lender must disclose such business or ownership relationships. The Agency will determine if such relationships are likely to result in a conflict of interest. This does not preclude lender officials from being on the borrower's board of directors.

§ 1779.28 Transfer of lenders or borrowers (prior to issuance of Loan Note Guarantee).

(a) Prior to issuance of the loan guarantee, the Agency may approve the transfer of an outstanding Conditional Commitment for Guarantee from the present lender to a new eligible lender: Provided, That:

(1) The former lender states in writing why it does not wish to continue to be the lender for this project;

(2) No substantive changes in ownership or control of the borrower has occurred;

(3) No substantive changes in the borrower's written plan, scope of work, or changes in the purpose or intent of the project has occurred; and

(4) No substantive changes in the loan agreement or Conditional Commitment for Guarantee are required.

(b) The substitute lender must execute a new application for loan and guarantee (available in any Agency office).

(c) If approved, the Agency will issue a letter of amendment to the original Conditional Commitment for Guarantee reflecting the new lender who will acknowledge acceptance of the offer in writing.

(d) Once the Conditional Commitment for Guarantee is issued, the Agency will not approve any substitution of borrowers, including changes in the form of the legal entity, except a change in the legal entity may be requested when the original borrower is replaced with substantially the same individuals or officers with the same interest as originally approved.

§ 1779.29 Fees and charges by lender.

(a) *Routine charges and fees.* The lender may establish charges and fees for the loan if they do not exceed those charged other borrowers for similar types of transactions. "Similar types of transactions" mean those transactions involving the same type of loan for which a non-guaranteed loan borrower would be assessed charges and fees.

(b) *Late payment fees.* Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) They are routinely made by the lender in all types of loan transactions;

(2) Payment has not been received within the customary timeframe allowed by the lender; or

(3) The lender agrees with the borrower, in writing, that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

(c) *Guarantee fees.* The guaranteed loan fee will be the applicable guar-

antee fee rate multiplied by the principal loan amount multiplied by the percent of guarantee. The one-time guarantee fee is paid when the Loan Note Guarantee is issued.

(1) The fee will be paid to the Agency by the lender and is nonreturnable. The lender may pass the fee to the borrower.

(2) The guarantee fee rates are available in any Agency office.

§ 1779.30 Loan guarantee limitations.

(a) The guarantee will be 90 percent of eligible loss.

(b) The lender will retain a minimum of 5 percent of the total loan amount. The retained amount must be from the unguaranteed portion of the loan and cannot be participated to another lender.

§§ 1779.31-1779.32 [Reserved]

§ 1779.33 Interest rates.

(a) *General.* Rates will be negotiated between the lender and the borrower. They may be either fixed or variable rates. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval.

(b) *Variable rate publication.* A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Such an agreement must be documented in the borrower or lender loan agreement.

(1) Interest rate caps and incremental adjustment limitations will also be negotiated between the lender and the borrower. Notice of any interest rate change proposed by the lender should allow a sufficient time period for the borrower to obtain any required State or other regulatory approval and to implement any user rate adjustments necessary as a result of the interest rate change. The intervals between interest rate adjustments will be specified in the loan agreement (but not more often than quarterly).

(2) The lender must incorporate within the variable rate note, the provision for adjustment of payments coincident with an interest rate adjustment. This